

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 06-0385**  
**Sales and Use Tax**  
**For The Tax Years 2003-2005**

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**ISSUE**

**I. Sales and Use Tax– Imposition**

**Authority:** IC § 6-8.1-5-1(a); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a).

The Taxpayer protests the imposition of use tax on shop supplies.

**II. Tax Administration- Ten Percent Negligence Penalty**

**Authority:** IC § 6-8.1-10-2.1, 45 IAC 15-11-2 (b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

The Taxpayer is a corporation that operates a paint and body shop. After an Audit, the Indiana Department of Revenue (Department) assessed additional use tax, penalty, and interest. The Taxpayer protested the assessments of penalty and use tax on shop supplies. A hearing was held. This Letter of Findings results.

**I. Sales and Use Tax – Imposition**

**DISCUSSION**

The Taxpayer was in the business of repairing damaged motor vehicles. In performing these repairs, the Taxpayer used many consumable items such as tools, sand paper, masking tape, masking paper, tack rags, nitrile gloves, buffing pads, and other prep supplies. The Department assessed use tax on the Taxpayer's use of these items. The Taxpayer protested this assessment. The Taxpayer argued that pursuant to requirements of insurance companies, the Taxpayer included the taxed items as materials on the invoices. As invoiced materials, the Taxpayer collected and remitted sales tax on the items.

Tax assessments are presumed to be valid. IC § 6-8.1-5-1(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

The shop supplies were consumed in the provision of a service, the repair of damaged vehicles. The shop supplies were not sold to the customers in a retail transaction. The Taxpayer was the final user of the shop supplies. Therefore, the Department properly imposed use tax on the Taxpayer's use of the shop supplies.

The Taxpayer protests that it should not have to pay sales tax twice. The Taxpayer's customers paid the sales tax and the Taxpayer remitted it to the state. The Department assessed use tax against the Taxpayer.

The Taxpayer's contention that sales taxes were incorrectly collected and remitted on the shop supplies does not affect the Taxpayer's use tax liability.

### **FINDING**

The Taxpayer's protest is respectfully denied.

## **II. Tax Administration- Ten Percent Negligence Penalty**

### **DISCUSSION**

The Taxpayer also protested the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

### **FINDING**

The Taxpayer's protest is sustained.

KMA/WL/DK-May 10, 2007